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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/667,284	09/22/2000	Thomas D. Dickson JR.	8132	1192

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EXAMINER
BECKER, DREW E

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 09/20/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Application No.	Applicant(s)
09/667,284	DICKSON ET AL.
Examiner	**Art Unit**
Drew E Becker	1761

Office Action Summary

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.

If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.

If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.

Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) [X] Responsive to communication(s) filed on *01 July 2002*

2a) [X] This action is **FINAL**. 2b) [ ] This action is non-final.

3) [ ] Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) [X] Claim(s) *1-29 and 34-41* is/are pending in the application.

4a) Of the above claim(s) *13-29 and 34-40* is/are withdrawn from consideration.

5) [ ] Claim(s) _____ is/are allowed.

6) [X] Claim(s) *1-12, 41* is/are rejected.

7) [ ] Claim(s) _____ is/are objected to.

8) [ ] Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) [ ] The specification is objected to by the Examiner.

10) [ ] The drawing(s) filed on __ is/are a) [ ] accepted or b) [ ] objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) [ ] The proposed drawing correction filed on _____ is a) [ ] approved b) [ ] disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) [ ] The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) [ ] Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) [ ] All b) [ ] Some * c) [ ] None of

1. [ ] Certified copies of the priority documents have been received.
2. [ ] Certified copies of the priority documents have been received in Application No. _____.
3. [ ] Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) [ ] Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) [ ] The translation of the foreign language provisional application has been received.

15) [ ] Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1. [ ] Notice of References Cited (PTO-892)
2. [ ] Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. [ ] Information Disclosure Statement(s) (PTO-1449) Paper No(s).
4. [ ] Interview Summary (PTO-413) Paper No(s). _____
5. [ ] Notice of Informal Patent Application (PTO-152)
6. [ ] Other

DETAILED ACTION

Election/Restrictions

1 Applicant's election with traverse of apparatus claims 1-11 in Paper No. 6 is acknowledged. The traversal is on the ground(s) that "the examiner has failed to carry his burden to show that the apparatus as claimed can be used in a materially different process." This is not found persuasive because the method claims, as acknowledged in applicants' response require the use and blending of "foodstuffs" while the apparatus claims are not limited to a particular method or use, but rather can be used to mix or blend other materials, for instance plastics or paints. Applicants also argue that there is no extra search burden. However, it is noted that the apparatus claims and method claims are classified in separate classes.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> [illegible] more than one year prior to the date of application for patent in the United States.

Reese et al teach a blending apparatus comprising a container at a blending location (Figure 1, 13), liquid supply lines (Figure 1CB, 41), a blending device (Figure 1, 12), an

ice supply which acts as a refrigeration system (Figure 2, 19), and a control panel with a microprocessor (Figure 1, 54). Phrases such as "wherein the foodstuffs comprise..." are merely preferred methods of using the claimed apparatus and as such are not given patentable weight

Claim Rejections - 35 USC § 103

4 The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made

5 Claims 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Reese et al.

Reese et al teach the above mentioned concepts. Reese et al do not recite a cleaning location with a liquid or six supply lines. It would have been obvious to one of ordinary skill in the art to provide a sink, with warm water from a spigot, in the invention of Reese et al in since this was the commonly known and accepted means to clean blender

6 Claims 1-2, 5-6, and 9-12 are rejected under 35 U.S.C. 103(a) as being

Reese et al teach the above mentioned concepts. Reese et al do not teach a peristaltic [illegible] comprising a peristaltic pump (Figure 5, 26). It

would have been obvious to one of ordinary skill in the art to incorporate the peristaltic pump of Farrell into the invention of Reese et al since both are directed to blending devices, since Reese et al already included liquid supply sources, since Reese et al required a means to provide precise portion control of the beverage or drink mix, since the peristaltic pump of Farrell was a commonly known means to provide a metered supply of liquid as shown by Farrell, and since pumps were not dependent upon gravity, thereby permitting the location of the fluid tanks to another location, for instance below a counter, to provide more operating space in the kitchen or workplace. It would have been obvious to one of ordinary skill in the art to provide six supply lines with the invention of Reese et al since Reese et al already illustrates four supply lines (Figure 1), since Reese et al teach using "any reasonable number of receptacles" (column 5, lines 6-10), and since six would certainly be considered a reasonable number.

Response to Arguments

7 Applicant's arguments filed July 1, 2002 have been fully considered but they are not persuasive.

Applicants argue that Reese et al do not teach a "water supply". However, column 5, line 54 of Reese et al recites the mixing of "beverage or other liquid" and [illegible] is merely [illegible] as discussed [illegible]. Intended use has been continuously held not [illegible] germane to determining the patentability of the apparatus. *In re Finsterwalder*, 168

USPQ 530. The manner or method in which a machine is to be utilized is not germane to the issue of patentability of the machine itself. *In re Casey*, 152 USPQ 235. A recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647. The purpose to which an apparatus is to be put and expression relating apparatus to contents thereof during intended operation are not significant in determining patentability of an apparatus claim, *Ex parte Thibault*, 164 USPQ 666.

Applicants argue that Reese et al do not teach a "refrigeration system". However, the adjacent ice tank (Figure 2, 18) inherently provided this function.

Applicants argue that a "sink with warm water" is not claimed. However, a sink with warm water from a spigot, satisfies the limitations of a "cleaning location" and "cleaning liquid supply line" as found in claim 8.

Applicants argue that incorporation of a peristaltic pump in the apparatus of Reese et al would "destroy" it. However, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference, nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*,

pumps were not dependent upon a gravity, thereby permitting the location of the fluid

tanks to another location, for instance below a counter, to provide more operating space in the kitchen or workplace.

Conclusion

8 **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E Becker whose telephone number is 703-305-0300. The examiner can normally be reached on Monday-Thursday 7am-5pm.

[illegible] regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1495.

Drew Becker
September 9, 2002

KEITH HENDRICKS
PRIMARY EXAMINER